IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3630 OF 2007

Krishnabai Narsayya Bollu ...Petitioner

vs.

Apparao Laxman Sonawane & Ors. ...Respondents

Mr.Ashok Tajane for the Petitioner
Mr.I.M.Khairdi for Respondent Nos.1 to 4.

CORAM: A.S.OKA,J.
DATE : JUNE 27, 2007.

P.C.:

1. Heard learned Advocate for the Petitioner and the learned Advocate for respondent Nos.1 to 4. Considering the nature of controversy involved in the Petition, it is not necessary to serve notice to rest of the Respondents. Considering the facts and circumstances of the case, taken up for final hearing at the stage of admission.

2. The Respondent Nos.1 to 4 filed a civil suit against the Petitioner and others. On 28th December 1999, the said suit was decreed in favour of the Respondent Nos.1 to 4. The present Petitioner preferred an Appeal for challenging the decree. On 22nd February 2005, the said Appeal was dismissed for default. An Application was made by the Petitioner for condonation of delay in making the Application for restoration of the Appeal. By the impugned order, the learned Ad hoc Additional District Judge rejected the Application made by the

Petitioner for condonation of delay. This is the order impugned in this Writ Petition under Article 227 of Constitution of India.

3. The learned Advocate for the Petitioner has invited my attention to the averments made in the Application for condonation of delay. He submitted that sufficient cause was made out for condonation of delay and for restoration of the Appeal in view of the grounds pleaded in the Application and in particular in paragraphs 3 and 4 of the Application. He submitted that no fault can be found with the Petitioner if the Appeal was dismissed for default as the Advocate appointed by the Petitioner remained absent.

4. The learned Advocate for Respondent Nos. 1 to 4 submitted that the Petitioner has not filed the written statement in the suit and has not stepped into witness box and no purpose will be served by restoration of the Appeal. He submitted that there was no sufficient cause for condonation of delay.

5. I have considered the submissions. The Appeal preferred by the Petitioner was admitted. The Appeal was dismissed on two grounds. The first ground is that the Advocate for the Petitioner was absent and the second ground was that the Petitioner had not taken steps.

6. In the decision of this Court in case of Annasaheb Virupaksha Bidre Vs. Dada Tatoba Patil and others [2005 (4) Bom.C.R. page 319], this Court held that once the Appellant engages the services of an Advocate in Appeal, it is not necessary for the Appellant to remain present before the Appellate Court on the dates fixed for hearing. This is not a case where the Appellate Court had directed the personal presence of the Petitioner.

7. In paragraph 3 of the Application, it is stated that the Advocate for the Petitioner had informed her that it was not necessary for her to attend the court and she will be informed about the progress of the Appeal. The Appeal was dismissed on 22nd February 2005 as the Petitioner's Advocate was not present. The Application for restoration was made by the Petitioner on 28th October 2007. It is asserted that the Application was made immediately after the Petitioner came to know about the dismissal of the Appeal.

8. Considering the aforesaid facts, sufficient cause was made out for condonation of delay. Once it is accepted that a sufficient cause was made out for condonation of delay by accepting the explanation for Petitioner's absence, it is obvious that the Appeal will have to be restored to the file. The loss which may be caused to the Respondent Nos.1 to 4 can be compensated by ordering payment of costs. The amount of

costs is quantified at Rs.5,000/-. The Advocate for the Petitioner has handed over a demand draft in the sum of Rs.5,000/- to the Advocate for the Respondent Nos.1 to 4 which the learned Advocate for the Respondent Nos.1 to 4 has accepted without prejudice to the rights and contentions of the said Respondents.

9. Hence, I pass the following order :

i) The impugned order dated 11th April 2007 is quashed and set aside.

ii) Civil Appeal No.336 of 2003 is restored to file in accordance with Rule 19 of Order XLI of the Code of Civil Procedure,1908.

iii) The Appellate Court will decide the Appeal as expeditiously as possible and in any event on or before 31st January 2008.

iv) Interim relief which was operating during the pendency of the Appeal will continue to operate till the disposal of the Appeal.

v) Writ Petition is disposed of in above terms.

JUDGE